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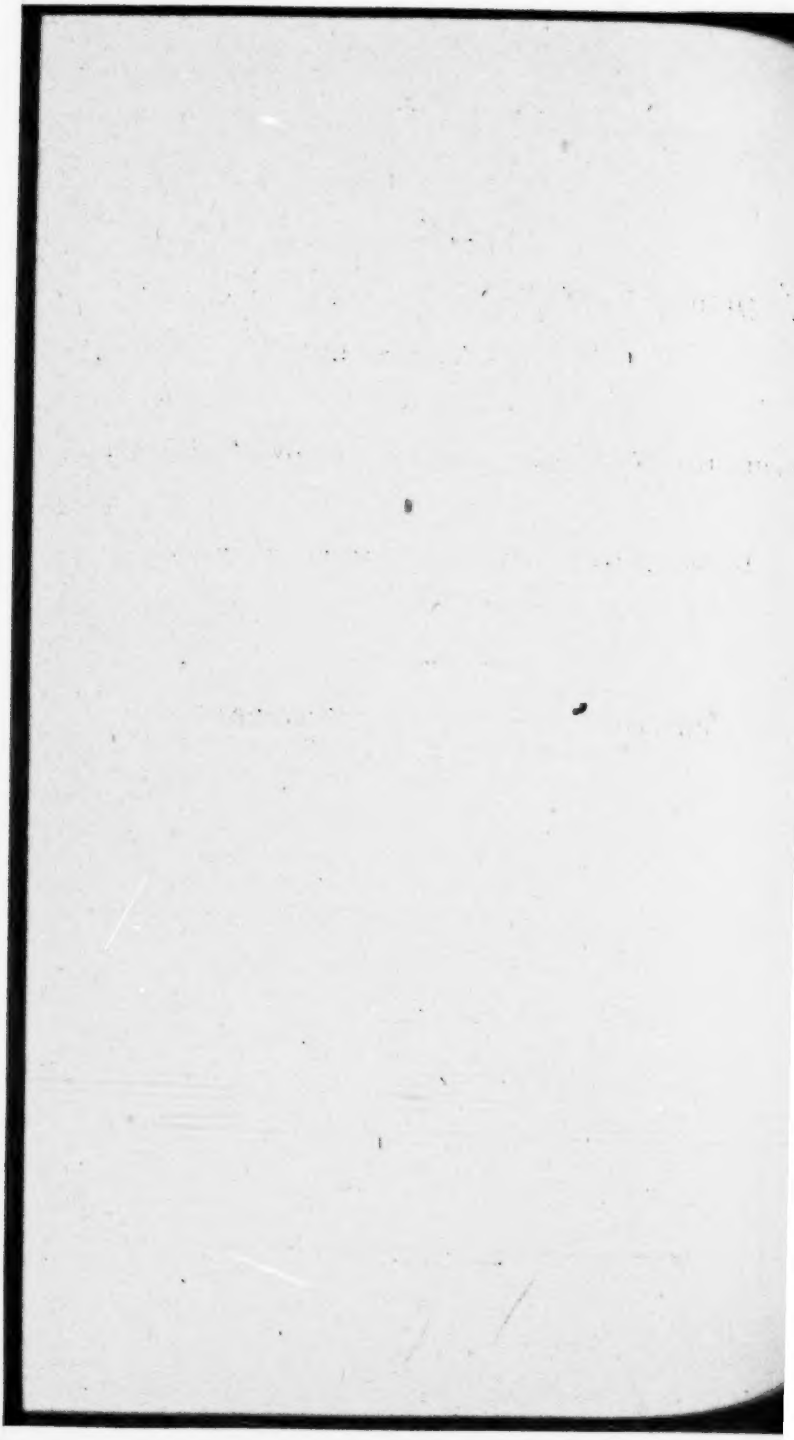
IN THE
Supreme Court of the United States
OCTOBER TERM, 1949

ELMER LEE WRIGHT, AN APPELLANT BELOW, *Petitioner*,

v.

UNITED STATES OF AMERICA, APPELLEE BELOW,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF



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ELMER LEE WRIGHT, AN APPELLANT BELOW, *Petitioner*,

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UNITED STATES OF AMERICA, APPELLEE BELOW,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Elmer Lee Wright, respectfully petitions your Honors for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit in this cause, and in support thereof now respectfully submits this, his petition, to which is appended his supporting brief:

PETITION

I.

Summary Statement of the Matter Involved.

The petitioner, with one Billie Leonard Moore, was indicted September 8, 1948, (R. 1) tried, convicted (R. 67) and sentenced (R. 68, 69) December 28, 1948, in the District Court for the Western District of

Arkansas for a violation of the Mann Act, 18 U.S.C.A. 398, 36 Stat. 825 (now 2421, New Title 18, U.S.C.). Moore was sentenced to 4 years (R. 69) and petitioner to 3 (R. 68).

An appeal from said judgment of conviction was taken by petitioner and the said Moore to the United States Court of Appeals for the Eighth Circuit (R. 78), which affirmed the judgment of the district court June 21, 1949 (R. 86-94), but with a dissenting opinion by Circuit Judge Woodrough (R. 92, 93).

The decision of the court of appeals has not yet been published.

A petition for rehearing was filed on behalf of petitioner on July 5, 1949 (R. 94-96), but was denied by the court of appeals by its order entered July 14, 1949 (R. 96).

The time for the filing of this petition was extended to and including the 6th day of September, 1949, by an order made by the Honorable Chief Justice of the Supreme Court of the United States entered August 11, 1949.

> (The appellant Moore has not petitioned for the writ of certiorari and did not seek a stay of the issuance of the mandate from the court of appeals to the District court.)

The indictment in a single count charged the petitioner and Moore with having transported on July 18, 1948, a woman, namely, Edna Mae Slayton, from Houston, Texas, to Texarkana, Arkansas, for the pur-

poses of prostitution, debauchery and illicit sexual intercourse (R. 1).

Texarkana is a dual city; one city is in Texas and the other in Arkansas. The Texas-Arkansas state line, which divides the two cities, is identical with the center line of State Line Avenue, a thoroughfare of both cities; points on one side of the avenue therefore are in Texas and those on the other in Arkansas (R. 27).

Two hotels on or just off State Line Avenue, the McCartney and the Savoy, enter into the case as locale pertinent to the issue involving interstate transportation; the McCartney is on the Texas side of State Line Avenue, and the Savoy on the Arkansas side (R. 27).

(Where the petitioner and the said Billie Leonard Moore are hereafter referred to jointly in this statement, they will be designated as appellants.)

The appellants, with Edna Mae Slayton, left Houston, Texas, by automobile on July 18, 1948, at about 3 a.m. and arrived at Texarkana, Texas, at about 11 a.m. of the same day (R. 35).

Miss Slayton was an admitted prostitute (17), which fact was known to both appellants (R. 21, 27).

Upon their arrival in Texarkana, Texas, appellants parked their car in front of the McCartney Hotel (R. 22), on the Texas side of State Line Avenue, to allow Miss Slayton to get a room at the McCartney (R. 40). Miss Slayton got out of the car and went into the McCartney to register for the room, leaving her luggage in the car (R. 28, 40). She was unable to obtain the room (R. 40) and abandoning her efforts to do so,

walked across the avenue alone to the Jefferson Coffee Shop, on the Arkansas side of the avenue, to get something to eat (R. 15, 37).

While Miss Slayton was at the coffee shop, the car was driven by appellants across the avenue to the Savoy Hotel in Arkansas (R. 28, 29), where Moore had reserved a room (R. 23). Miss Slayton's luggage was there unloaded and taken into the hotel at the instance of the appellant Moore (R. 11, 12). Moore then registered for his room at the Savoy in the names of "W. L. Thomas and wife" (R. 7). He had reserved the room (R. 23) before leaving Houston by telegram sent in the name of "W. L. Thomas" requesting a reservation for "Mr. and Mrs. W. L. Thomas" (Gov's. Exhibit 1, R. 8). There was evidence tending to show that petitioner knew of the sending of this telegram (R. 7).

After she had eaten at the coffee shop, Miss Slayton, accompanied by Moore, who had rejoined her at the coffee shop and had there informed her that he had obtained a room at the Savoy Hotel (R. 23), walked to the Savoy (R. 23) and occupied Moore's room (R. 15, 16), and there undoubtedly engaged in prostitution (R. 15, 39).

Moore, having given Miss Slayton his room at the Savoy, returned to the McCartney Hotel, where he took and occupied a room in the names of "Mr. and Mrs. R. B. Douglas" (R. 36). The petitioner also registered and occupied a room at the McCartney (R. 36).

Petitioner submits that the above and foregoing

statement is sufficient for the purposes of this petition, but in fairness to the court states in the margin below the following additional facts from the record.[1]

Jurisdictional Statement.

It is contended that the Supreme Court has jurisdiction to review the judgment here in question under the Act of Congress of June 25, 1948, c. 646, §39, 62 Stat. 992; section 1254 of New Title 28, U.S.C.; and that it ought to exercise its supervisory powers to grant the writ of certiorari, because the Court of Appeals of the Eighth Circuit in this cause has decided an important question of federal law which has not been, but should be, settled by the Supreme Court.

Questions Presented.

The Questions Here Presented Are:

1. Did the petitioner transport the woman in interstate commerce, or aid, abet, induce, or procure such transportation?

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[1]Miss Slayton testified that in making the trip from Houston to Texarkana she was on her way to Magnolia, Arkansas, to visit her father and had taken advantage of the automobile ride as far as Texarkana (R. 16, 40); that she had shipped her trunk on ahead of her to Magnolia (R. 40); and that in practicing prostitution at the Savoy Hotel she was trying to earn money to help defray the expenses of the trip (R. 16, 17).

The automobile in which the journey was made belonged to the petitioner (R. 27). He drove it part of the way from Houston to Texarkana, Texas, and it was he who drove it from the McCartney Hotel to the Savoy Hotel (R. 27).

The bell boy at the Savoy Hotel testified that when appellants reached that hotel, the appellant Moore asked him (the bell boy) if he "needed a girl" and received an affirmative answer (R. 11).

There were no acts of sexual intercourse between Miss Slayton and either of the appellants on any part of the journey or at the journey's end (R. 40). She testified that she never discussed with either appellant the matter of practicing prostitution in Texarkana (R. 39); and that her practice of prostitution there had not been planned with them (R. 40).

2. Did the petitioner transport the woman in interstate commerce, or aid, abet induce or procure such transportation with the intent that she should engage in prostitution?

3. Did the petitioner transport the woman from Houston, Texas, to Texarkana, Arkansas, as alleged in the indictment, or aid, abet, induce or procure her transportation between those points?

4. Did the petitioner transport the woman from Houston, Texas, to Texarkana, Arkansas, or aid, abet, induce or procure her transportation between those points with the intent that she should practice prostitution in Texarkana, Arkansas?

Reasons Relied on for Allowance of the Writ.

The questions stated immediately above should be settled by this court, because under the unique circumstances of this case they present an aspect of the subject of interstate transportation, as an element of the offense charged, which this court has never before had under consideration.

The court of appeals applied to this case the cases of *Mellor v. United States,* 8 Cir. 1947, 160 Fed.2d 757 (certiorari denied, 331 U. S. 848), and *United States v. Jamerson* (D. C. Iowa, 1944) 60 F. Supp. 281, and held this case to be the same in principle as those. It is petitioner's contention that those cases are so far different from his that the holding of the court of appeals is likely to bring on such confusion of opinion as to the true meaning of the rule those cases lay down as to destroy their value as precedent, and that

the Supreme Court should therefore now clarify the matter by an interpretative restatement of the rule of those cases and in doing so distinguish them from petitioner's case.

Petitioner contends that the only similarity between his case and those of Mellor and Jamerson is that in all three cases the journey was made by automobile and that in each the automobile was stopped at the state line. He contends however that in the *Mellor* and *Jamerson* cases the stopping of the car was admittedly a subterfuge or trick to escape the consequences of the Mann Act and could not have been explained on any other ground. In those cases the courts of appeal simply refused to hold as a matter of law that an accused may escape the consequences of his wrongdoing by stopping his car at the state line and letting the woman being transported walk across the state line only to re-enter the automobile in the other state and resume her journey to the point of destination in the other state, as was done in the *Mellor* and *Jamerson* cases.

His case, petitioner further contends, is to be distinguished from the *Mellor* and *Jamerson* cases in the fact that when Miss Slayton got out of the car in Texarkana, Texas, she was free to go and come as she pleased; the appellants then and there lost control of her, for she was no longer dependent upon them for transportation. A further distinction is to be found in the fact that in petitioner's case the stopping of the car at the state line was not for the purpose of permitting the woman to walk across the state line

at all, but for the purpose of permitting her to register for a room in the McCartney Hotel, in Texarkana, Texas, which was her destination insofar as the automobile trip from Houston was concerned.

The soundness of these contentions, petitioner submits, will be demonstrated in his appended supporting brief.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the United States Court of Appeals of the Eighth Circuit, commanding said court to certify to this court a full and complete transcript of the record and of the proceedings of the said court of appeals had in the cause numbered on its docket No. 13,888, wherein your petitioner, Elmer Lee Wright, and one Billie Leonard Moore, were appellants, and the United States of America was appellee, to the end that this cause may be reviewed and determined by this court as provided for by the Statutes of the United States and the Rules

of this Court; and that the judgment of said Court of Appeals herein be reversed by this court as to him, your petitioner; and for such other and further relief in the premises as this court shall deem to be proper.

Dated August 31, A. D. 1949.

ELMER LEE WRIGHT, *Petitioner*

Petitioner's Counsel for the
Purposes of this Petition.

Counsel for petitioner in
the Court of Appeals below were:

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JAMES ROYALL, Formerly of
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Bar, now residing at
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Houston, Texas.

No. .....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

ELMER LEE WRIGHT, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITIONER'S SUPPORTING BRIEF ON PETITION FOR WRIT OF CERTIORARI

I.

Opinion of the Court Below.

The opinion of the Court of Appeals for the Eighth Circuit, rendered June 21, 1949, was by Circuit Judge Sanborn, with dissenting opinion by Circuit Judge Woodrough (R. 86-94). It has not yet been published.

II.

Jurisdictional Statement.

It is contended that the Supreme Court has jurisdiction to review the judgment here in question under the Act of Congress of June 25, 1948, c. 646, §39, 62 Stat. 992; section 1254 of the Title 28, U.S.C.; and that it ought to exercise its supervisory powers to

grant the writ of certiorari, because the Court of Appeals of the Eighth Circuit in this cause has decided an important question of federal law which has not been, but should be, settled by the Supreme Court.

III.

Statement of the Case.

A full statement of the case will be found in the foregoing petition. The statement there made is hereby adopted and made a part of this brief.

IV.

Specification of Errors.

1. The court of appeals belowed erred in holding that petitioner transported the woman in the case in interstate commerce.

2. The court of appeals below erred in holding that petitioner transported the woman in the case in interstate commerce for the immoral purposes specified in the indictment.

3. The court of appeals below erred in applying to the case at bar the cases of *Mellor v. United States,* 8 Cir. 1947, 160 Fed.2d 757 (certiorari denied 331 U.S. 848), and *United States v. Jamerson* (D.C. Iowa 1944) 60 F. Supp. 281.

V.

Argument.

First Point. There was no interstate transportation.

Petitioner's contentions on this point have already

been stated briefly in the foregoing petition. It will not do to say that those contentions are based upon issues of fact which the jury in the trial court may have resolved against the petitioner, or upon testimony which may have been rejected by the jury as untrue, because in that case the jury's verdict, as petitioner urged below, was clearly contrary to the evidence. That testimony was a part of the government's own case, was unimpeached and uncontradicted, and was entirely consistent with other undisputed facts in evidence and with all the circumstances of the case. As contended in the petition, when Miss Slayton, the woman in the case, got out of the car in Texarkana, Texas, she was no longer dependent upon the petitioner or the appellant Moore for transportation. She was at liberty to remain in Texarkana, Texas, or to go across the street into Texarkana, Arkansas, and to practice prostitution, if she desired to do so, in either place. There was no evidence in the case tending to show that Texarkana, Arkansas, afforded a more desirable field for the practice of prostitution than Texarkana, Texas. If she chose Texarkana, Arkansas, it must have been, as she said in her testimony as a government witness, for the reason that she was unable to obtain a room at the McCartney Hotel on the Texas side of State Line Avenue.

Second Point. There was no interstate transportation of the woman in the case with the intent upon the part of the petitioner that she should engage in the immoral practices specified in the indictment.

Petitioner contends that he and appellant Moore really made two trips on July 18, 1948: one from Houston, Texas, to Texarkana, Texas, and the second, as short as it was, from Texarkana, Texas, to Texarkana, Arkansas; that the failure of Miss Slayton to obtain a room at the McCartney Hotel was an unexpected turn in the events of the day; that the second trip was conceived and begun, insofar as Miss Slayton and her luggage were concerned, only after and because of her failure to obtain the room; that whatever the intention of the travelers may have been in making the second trip, there was no interstate ttransportation of the woman pursuant to such intention, because she was not transported at all after it was formed; she was already in Arkansas when the second trip began.

Third Point. The court of appeals below erred in applying to the case at bar the cases of *Mellor v. United States,* 8 Cir. 1947, 160 Fed.2d 757 (certiorari denied 331 U. S. 848), and *United States v. Jamerson* (D. C. Iowa 1944) 60 F. Supp. 281.

This point has been treated of in the foregoing petition in petitioner's effort to show that the holding of the court below that the cited cases are applicable to the case at bar is likely to give rise to such confusion of opinion as to the rule those cases lay down as to destroy their value as precedent.

No further discussion of the point seems to be necessary. Petitioner however now calls the court's attention to the fact that Circuit Judge Woodrough, who wrote for the court in the *Mellor case,* also wrote the dissenting opinion in the case at bar. We urge the

court to consider carefully his dissenting opinion; he thought there was no interstate transportation.

VI.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory power to grant a writ of certiorari and thereafter to review and as to the petitioner to reverse the said decision of the Court of Appeals for the Eighth Circuit.

Respectfully submitted,

arthur J. Mandell

Petitioner's Counsel for the
Purposes of this Brief.

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the Court of Appeals below were:

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Houston 2, Texas.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 313

ELMER LEE WRIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (R. 86-93) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered June 21, 1949 (R. 93-94), and a petition for rehearing (R. 94-96) was denied July 14, 1949 (R. 96). On August 11, 1949, petitioner's time for filing a petition for a writ of certiorari was extended by order of Mr. Chief Justice Vinson to and

including September 6, 1949 (R. 100), and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the evidence showed that petitioner transported Edna Mae Slayton in interstate commerce from Houston, Texas to Texarkana, Arkansas, as alleged in the indictment.

2. Whether the evidence showed that such transportation was effected with the intent and purpose on petitioner's part that Edna Mae Slayton engage in prostitution.

STATUTE INVOLVED

Section 2 of the Mann Act, 18 U.S.C. (1946 ed.) 398,[1] provided:

> Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or

[1] Now 18 U.S.C. 2421.

aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

Petitioner and Billie Leonard Moore were indicted on September 8, 1948, in the District Court for the Western District of Arkansas in one count charging a violation of Section 2 of the Mann Act. The indictment alleged that on or about July 18, 1948, petitioner and Moore knowingly transported Edna Mae Slayton from Houston, Texas, to Texarkana, Arkansas, for the purpose of prostitution (R. 1). Following a trial by jury, petitioner and Moore were found guilty (R. 67-68) and petitioner was sentenced to three years' imprisonment (R.

68-69).[2] Their motion for a new trial was denied (R. 71), and they appealed to the Court of Appeals for the Eighth Circuit, which affirmed the convictions, one judge dissenting (R. 92-94).

At the trial the following undisputed evidence was adduced by the Government:

Edna Mae Slayton, known to petitioner to be a prostitute, had been plying her trade with Moore's assistance in Houston, Texas (R. 17, 21-22, 27, 38-39). On July 18, 1949, pursuant to a plan made by all three, she traveled with petitioner and Moore in petitioner's car from Houston, Texas, to Texarkana, Texas, the two men sharing in the driving (R. 15, 22, 27-29, 35, 38-39). Upon arrival in Texarkana, Texas at 11:00 a.m., the party stopped on the Texas side of State Line Avenue near the McCartney Hotel, where Edna left the car and walked across the street and the state line to the Jefferson Coffee Shop (R. 15, 22, 27-28, 37). Petitioner immediately drove the car with Moore and Edna's luggage to the Savoy Hotel in Arkansas (R. 22, 27-29).[3] On entering the hotel, Moore, in petitioner's presence, asked the bell boy if he "needed a girl", to which the bell boy replied in the affirmative (R. 11, 22-23). Petitioner and Moore then

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[2] Moore was sentenced to imprisonment for four years (R. 69-70).

[3] State Line Avenue in Texarkana is the Arkansas-Texas line. The McCartney Hotel is on the Texas side of the avenue. Directly across, on the Arkansas side, is the Jefferson Coffee Shop and one block east thereof on the Arkansas side is the Savoy Hotel. (R. 27.)

went to the desk, where Moore asked for a reservation in his name. He was told that there was no such reservation, but that there had been a telegraphic request for one from a Mr. and Mrs. W. L. Thomas of Houston. Petitioner thereupon said, "That's it". (R. 6-8.) Moore registered under the name of Thomas and secured a room with a double bed for himself and "his wife," specifically refusing twin beds (R. 7-9, 16, 23). The luggage, including Edna's, was taken to the room (R. 12, 23, 37-38). Immediately thereafter, Moore went to the Jefferson Coffee Shop, picked up Edna, and returned with her to the room, arriving about 11:30 a.m. Edna promptly arranged with the bell boy, in Moore's presence, to "fill a date." (R. 12-14, 23, 37, 40.) Edna occupied the room that day and practiced prostitution (R. 15-16, 39). Meanwhile, petitioner and Moore obtained rooms at the McCartney Hotel for that night (R. 33, 36).

ARGUMENT

1. Viewing the trip in its entirety, petitioner's contention that it ended in Texarkana, Texas, and did not involve interstate commerce is, to say the least, unrealistic. It is insupportable, either in fact or in law, as the Court of Appeals so cogently demonstrated (R. 88-91). The uncontroverted evidence showed that petitioner and Moore stopped at the Texas state line only long enough to permit Edna to leave the car, that they drove the car, with her luggage, directly across the state line

to the Savoy Hotel, where Moore, in petitioner's presence, registered for himself and "his wife" under the name of W. L. Thomas pursuant to a telegraphic request for a reservation sent by him from Houston with petitioner's knowledge, and that Moore immediately went to get Edna, who in the meantime had walked across the state line. This evidence, especially the proof as to the telegraphic reservation, clearly showed that the Savoy in Arkansas, and no point short of there, was the destination of the trip for all three. The fact that Edna completed the last few yards of the interstate trip on foot is wholly immaterial in view of the prior carefully made plans. The case falls squarely within the principles established in *United States* v. *Mellor,* 160 F. 2d 757, 764 (C.A. 8), certiorari denied, 331 U. S. 848, and *United States* v. *Jamerson,* 60 F. Supp. 281, 285 (N.D. Ia.), where, on analogous facts, the courts refused to permit "legal fiction" to "be substituted for realities to thwart justice." Although in those cases, the women involved returned to the car to complete the trip after walking across the state line, indicating conclusively that the trip was interstate, the evidence here of the actions of the parties prior and subsequent to the stop at the Texas line is equally convincing proof of the unitary character of the trip from Houston to the Savoy.

2. Contrary to petitioner's contention, the facts discussed in the first part of this argument also

show that petitioner's intent from the time he left Houston until he arrived at the Savoy Hotel was to transport Edna for immoral purposes. In the light of these facts, the guilty knowledge clearly inferable from the artifice of having Edna walk across the street into Arkansas, and the additional facts that petitioner knew her to be a prostitute when he left Houston with her and participated in the planning of the trip, that Moore, in petitioner's presence, made an effort to secure "dates" for Edna immediately upon their arrival at the Savoy, that no evidence was adduced indicating any other purpose for the trip on petitioner's part, and that Edna practiced prostitution at the hotel that same afternoon, it would be difficult to draw any other conclusion.

CONCLUSION

We respectfully submit that the petition for a writ of certiorari presents no questions which require further review by this Court and should therefore be denied.

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OCTOBER 1949.

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